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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,581	01/08/2004	Christopher Lyon	LYON 2 00002	6626
27885	7590	06/01/2006		
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER LEVKOVICH, NATALIA A	
			ART UNIT	PAPER NUMBER

1743

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,581

Applicant(s)

LYON ET AL.

Examiner

Natalia Levkovich

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 34-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and remarks filed 03/13/2006 have been acknowledged by the Examiner.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the 'ridge(s) along the interior surface of the collection sleeve' must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining

Art Unit: 1743

figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 10, 12, 21 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, claims 10, 21 and 30, as amended, now recite a 'horizontal collection sleeve'. The amended claim 12 now recites the collection sleeve to include a first ridge and a second ridge, the first ridge being opposed to the second ridge. The support for the aforementioned amendments was not found in the original disclosure.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 1743

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. The amended claims 1-33 and 37-40 are rejected under 35 U.S.C. 112, second paragraph, as being unclear for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites '... at least one fluid collection sleeve allows passage of said bottom end of said fluid collection tube while preventing passage of said enlarged top end whereby said fluid collection tube is adapted to be pushed in opposing directions along an axis of said sleeve firstly from said top end and secondly from said bottom end'. The claim is narrative in style and replete with functional language. It is not clear what structural features of the claimed sleeve provide for the cited functionality. See also claim 37.

In claim 1, lines 9-10, the 'ridge along an interior surface' is unclear. See also claims 12 and 38.

In claim 7, lines 2-3, it is not clear how the rim (which appears to have cylindrical shape) 'extending along' the edge of the guard can be orthogonal to the guard. In this context, it is also unclear what is meant by the rim being 'away' from the sleeves. See also claim 18 and 29.

Claims 10, 21 and 30, as amended, now recite a 'horizontal collection sleeve'. Since the orientation of the claimed device was not clearly set forth, it is not clear what arrangement is intended by the Applicant.

Art Unit: 1743

In claim 23, line 4, the 'open-ended protective guard is unclear and indefinite, since no ends of the guard are defined in the claims.

In claim 37, line 6, the 'partially collapsed first and second end' is unclear.

Claim Interpretation

7. With respect to claims 1-33 and 37-40, note that since the tubes are not positively recited in these claims, as amended, these elements, as well as their parts, are not considered to be a part of the claimed invention, and, therefore, are not accorded any patentable weight.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action

9. Claims 1-2, 4-11, 23-25, 27-32 and 37-40 are rejected under 35 U.S.C. 102(b) as anticipated by Christensen (US 2715487).

Referring to claims 1-2, Christensen discloses a cartridge holder comprising, as shown in Figure 1, an elongated flexible panel 14 ['elongated body', or 'band' – Ex.] with a plurality of cartridge sleeves / retainers 26. ['collection sleeves' – Ex.]. Each collection sleeve includes at least two continuous "rows of stitching 28" ['ridges along an interior surface opposed to each other' – Ex.].

Art Unit: 1743

With respect to claims 4, 10, 27 and 30, Christensen discloses two rivets 32 [first and second members for securing the band' – Ex.] fitted into corresponding holes.

As to claims 5-6, 9, 23, 28, 32 and 40, flexible panels 12 and 14 constitute a guard 'hingedly connected' to the sleeve area of the holder. The 'guard' accommodates a plurality of apertures 20 aligned with the retaining sleeves.

In regards to claims 7 and 29, Christensen discloses stitching 30 ['rim extending along at least one edge' – Ex.].

Pointing to claims 8 and 31, Christensen teaches that the holder is made of "flexible material, as leather or plastic" (Col. 1, line 25).

Claim Rejections - 35 USC § 103

10. Claims 3, 12-22, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen.

Referring to claims 3, 15 and 26, Christensen does not teach sleeves having different diameters, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed such sleeves in the modified apparatus of Christensen, in order to accommodate cartridges / tubes of various sizes.

With respect to claim 12, although Christensen does not teach a securing band, such bands are well known for a very long time. It would have been within the ordinary skill of the artisan to have employed a band or a tie in the modified

Art Unit: 1743

apparatus of Christensen, in order to attach device to an exterior object, for example, a user's hand.

As to claims 22 and 33, although Christensen does not teach the holder to include 'identification area', the use of labels or identification codes is well known in the art for a very long time, and the apparatus of Christensen is capable of accommodating such an area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have arranged an identification area in the modified apparatus of Christensen, in order to record identifying information.

Response to Arguments

11. Applicant's arguments filed 03/13/2006 have been fully considered but they are not persuasive and moot in view of new grounds of rejection.

Applicant argues that Christensen 'does not describe a ridge along an interior surface of the sleeve'. Examiner disagrees. Figure 1 clearly shows that each collection sleeve includes at least two rows of stitching 28, which, in the absence of better definition provided, can be interpreted as the 'ridges along an interior surface'.

Applicant argues that the sleeves Christensen do not allow 'access to the cartridge from either end as recited in the amended claim 1'. Examiner notes that this claim, as amended, is narrative in style and replete with functional language which does not clearly set forth the structural element of the sleeve that would provide for the functionality in question.

Art Unit: 1743

Applicant states that Christensen 'does not teach the protective guard to be an 'open ended'. Examiner disagrees. Figures 1 and 5 clearly show flat [that is, 'open ended' – Ex.] 'flexible panels 12 and 14' which constitute the guard.

Applicant argues that Christensen 'does not describe nor suggests hanging the holder' or securing it to a user's hand with a band. Examiner disagrees. Christensen discloses two rivets 32 [first and second members for securing the band' – Ex.] fitted into corresponding holes and allowing to hang the holder. As to the securing band, securing ties and bands are notoriously well known and are routinely used. It would have been within the ordinary skill of the artisan to have employed a band or a tie in the modified apparatus of Christensen, in order to attach device to any exterior object, such as, a user's hand.

Applicant argues that the device of Christensen does not allow inserting tubes 'firstly through the opening and secondly through the sleeve'. Examiner disagrees. The device Christensen does allow inserting an object of cylindrical shape, first through an opening 20 and, second, into a sleeve 26 (see Figure 1).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1743

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



LYLE A. ALEXANDER
PRIMARY EXAMINER

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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